

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RICKEY A. BEAVER,

Plaintiff,

v.

CITY OF FEDERAL WAY, *et al.*,

Defendants.

CASE NO. C05-1938-MJP-JPD

ORDER TO SHOW CAUSE

Plaintiff has submitted a complaint pursuant to 42 U.S.C. § 1983 and an application to proceed *in forma pauperis* (“IFP application”). (Doc. #1). Plaintiff is currently in custody at Western State Hospital in Tacoma, Washington. Having considered plaintiff’s complaint and IFP application, and the balance of the record, the court does hereby find and ORDER as follows:

(1) Plaintiff’s lawsuit faces two immediate obstacles. First, it appears that plaintiff may not qualify for IFP status as a “prisoner” under the Prisoner Litigation Reform Act (“PLRA”), because he is not currently detained in a prison or jail. He is detained in a hospital and consequently, it appears that his detention may be the result of a civil commitment order and not a criminal conviction. Only individuals who, at the time they seek to file their civil actions, are detained as a result “of being accused of, convicted of, or sentenced for criminal offenses” are “prisoners” within the definition of the PLRA. *See Page v. Torrey*, 201 F.3d 1136, 1140 (9<sup>th</sup> Cir. 2000). Therefore, plaintiff must clarify the nature of his detention before the court may review his IFP application.

Second, plaintiff alleges in his complaint that two Federal Way police officers used excessive force when they arrested him in August 2004. (Complaint at 3). For relief, plaintiff seeks \$250,000 in

1 damages. Before the court may determine whether to direct the Clerk to serve plaintiff's complaint on  
2 defendants, plaintiff must clarify whether the events that he has described led to his own criminal  
3 conviction. If so, then this lawsuit may not proceed unless plaintiff first succeeds in having the  
4 conviction overturned: "[W]hen a state prisoner seeks damages in a § 1983 suit, the district court  
5 must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his  
6 conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can  
7 demonstrate that the conviction or sentence has already been invalidated." *Heck v. Humphrey*, 512  
8 U.S. 477, 487 (1994). Thus, plaintiff must demonstrate that either he has not been convicted as a  
9 result of the 2004 arrest or that the conviction has been invalidated.

10 Accordingly, no later than **February 8, 2006**, plaintiff shall SHOW CAUSE in writing why his  
11 lawsuit should not be dismissed on either of the above two grounds.

12 (2) The Clerk shall forward a copy of this Order to plaintiff and to the Honorable Marsha  
13 J. Pechman.

14 DATED this 10th day of January, 2006.

15  
16 s/ James P. Donohue  
JAMES P. DONOHUE  
United States Magistrate Judge  
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